

DRAFT

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

PUBLIC UTILITIES COMMISSION OF
THE STATE OF CALIFORNIA; et al.,

Petitioners,

SOUTHERN CALIFORNIA EDISON
COMPANY; et al.,

Petitioner-Intervenors,

v.

FEDERAL ENERGY REGULATORY
COMMISSION,

Respondent,

MIRANT CALIFORNIA, LLC; et al.,

Respondent-Intervenors,

and

PORTLAND GENERAL ELECTRIC
COMPANY; et al.,

Nonaligned Intervenors.

PETITIONS RAISING
TEMPORAL SCOPE
(Case numbers to be determined).

ORDER

Before: THOMAS, McKEOWN and CLIFTON, Circuit Judges

As set forth in our October 22, 2004 order, an initial round of briefing will address the temporal scope of refunds under section 206 of the Federal Power Act. The following provisions will govern briefing:

Schedule: The record or certified index is due November 15, 2004.

The lead petitioner's opening brief is due December 7, 2004; petitioner-intervenors' briefs are due December 21, 2004; respondent's brief is due January 20, 2005; respondent-intervenors' briefs and nonaligned intervenors' briefs are due February 3, 2005; lead petitioner's optional reply brief is due February 17, 2005; petitioner-intervenors' optional reply briefs are due February 24, 2005. No motions to continue these dates will be entertained. Failure to comply with the deadlines may subject a litigant to sanctions under Fed. R. App. P. 31(c) or Ninth Circuit Rule 42-1. No motions to file supplemental briefs will be entertained.

Intervenor briefs: Each of the following proposed groups of litigants may file an intervenor brief in support of affirmance, in support of reversal or as a nonaligned intervenor.

California parties	California generators
Public entities (including	Pacific Northwest purchasers
Bonneville Power Administration)	Competitive supplier group
Co-generators	California ISO
Salt River Agricultural Improvement	
and Power District	

A petitioner or group of petitioners that files the lead brief may not participate as an intervenor in that set of briefing. The filing of an intervenor brief is optional. A group may not file more than one intervenor brief within a given set of briefing. The covers of intervenors' briefs shall identify the group on whose behalf the brief is filed as well as the names of the individual parties.

Brief lengths: The lead petitioner's opening brief shall not exceed 21,000 words. Intervenors' briefs shall not exceed 7,000 words. Respondent's brief shall not exceed 35,000 words. Petitioner's optional reply brief shall not exceed 14,000 words. Petitioner-intervenors' optional reply briefs shall not exceed 7,000 words. No motions to file briefs exceeding the noted limits will be entertained.

Motions to Supplement Record/Requests for Judicial Notice: Any motions to

supplement the record and/or requests for judicial notice will be referred to the merits panel for resolution. The party submitting the motion or request may provisionally refer to the proposed supplementation or material to be judicially noticed with the understanding that the panel may strike any such references if the panel declines to grant the motion or request.

Friend of the court briefs: Any application to file a friend of the court brief must be accompanied by the proposed brief; the application and any response will be referred to the merits panel for resolution. The Court will scrutinize any such application closely and will only grant such requests if the Court is convinced the brief will be of exceptional assistance.

Copies, electronic service, and electronic filing: The parties shall file an original and fifteen copies of each brief. All briefs shall be served by overnight mail on the other parties; alternatively, the parties may consent to electronic service pursuant to Circuit Rule 25-3.3. Excerpts of record, supplemental excerpts and further excerpts shall accompany the briefs pursuant to Circuit Rule 17-1. However, the parties need only file three hard copies of the excerpts; a CD-ROM version of each set of excerpts, supplemental excerpts or further excerpts shall be furnished to the court.

The previously-filed briefs are stricken.

The remainder of petitions raising the temporal scope issue are stayed pending the court's resolution of the above petition(s).